No. 26-1718

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

RYAN KELLY,
Plaintiff-Appellant,
v.
VILLAGE OF FOX LAKE,
Defendant-Appellee.

U.S.C.A. – 7th Circuit
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On Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
No. 1:25-cv-15047 — The Honorable Jeremy C. Daniel

BRIEF OF PLAINTIFF-APPELLANT RYAN KELLY

Ryan Kelly
Pro Se
[redacted]

DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, Plaintiff-Appellant Ryan Kelly, proceeding pro se, states that he is an individual party and not a corporation. He has no parent corporation, and no publicly held corporation owns any stock or interest in him. He is not represented by counsel in this appeal.

Dated: May 26, 2026

[redacted]

/s/ Ryan Kelly

Ryan Kelly, Pro Se

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JURISDICTIONAL STATEMENT

The district court had subject-matter jurisdiction over Plaintiff's federal claims under 28 U.S.C. §§ 1331 and 1343, and supplemental jurisdiction over Plaintiff's state-law claims under 28 U.S.C. § 1367. This Court has appellate jurisdiction under 28 U.S.C. § 1291 over the district court's final order entered April 7, 2026, dismissing all claims with prejudice (R. 23), and the corresponding judgment entered April 10, 2026 (R. 31). Plaintiff filed a timely notice of appeal on April 8, 2026 (R. 24) under Federal Rule of Appellate Procedure 4(a)(1)(A). The notice of appeal was filed after the district court's April 7, 2026 order but before entry of the separate judgment on April 10, 2026; it is therefore treated as filed on the date of and after the entry of judgment, Fed. R. App. P. 4(a)(2), and is timely. The underlying complaint was deemed timely filed as of October 10, 2025 by order of the Honorable Jorge L. Ortiz of the Nineteenth Judicial Circuit, Lake County, Illinois, pursuant to Illinois Supreme Court Rule 9(d)(2). (R. 11, Ex. A.)

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the district court erred in applying the Illinois Local Governmental and Governmental Employees Tort Immunity Act's one-year limitations period to a statutory claim under the Illinois Whistleblower Act, when this Court has held the question unsettled in *Williams v. Office of the Chief Judge of Cook County*, 839 F.3d 617, 626 (7th Cir. 2016).

2. Whether the district court erred in applying the Tort Immunity Act's one-year limitations period to a statutory claim under the Public Officer Prohibited Activities Act, 50 ILCS 105/4.1.

3. Whether the district court erred in fixing the accrual date of Counts I, III, IV, and V at March 16 or 18, 2023, when Plaintiff was on paid administrative leave and had suffered no compensable economic injury, rather than at the October 10, 2023 Village Board vote that first deprived Plaintiff of wages and benefits.

4. Whether the district court erred by fixing the accrual date of Count V (First Amendment retaliatory prosecution) at the March 18, 2023, arrest, rather than the April 23, 2025, grand jury indictment, under *Towne v. Donnelly*, 44 F.4th 666 (7th Cir. 2022).

5. Whether the district court erred by failing to address Plaintiff's properly preserved equitable-tolling argument under *Holland v. Florida*.

6. Whether the district court properly exercised its discretion in dismissing the Amended Complaint with prejudice and without leave to amend.

STATEMENT OF THE CASE

A. Factual Background

Because the district court dismissed under Rule 12(b)(6), the following facts are drawn from the well-pleaded Amended Complaint (R. 11) and are accepted as true. Plaintiff Ryan Kelly has been employed by the Village of Fox Lake since 1994; at all relevant times he served as Director of the Northwest Region Water Reclamation Facility. (R. 11 ¶¶ 16, 35.)

For years, Plaintiff had identified and documented financial mismanagement affecting the Northwest Region facility, beginning with his 2013 documentation of the improper diversion of facility funds into the Village's general fund. (R. 11 ¶ 41.) His reports were disregarded until 2016, when tributary communities sued the Village and Lake County over the very misallocations Plaintiff had identified; in the resulting 2017 mediation, rather than simply repaying the overcharges, the Village administration, then headed by Village Administrator Anne Marrin, instituted a separate set of false charges — billing Northwest Region customers for facility maintenance tasks falsely attributed to Village-paid staff — charges embedded in the facility's rates that continue to this day. (R. 11 ¶¶ 42-44, 50-52, 60.) When Plaintiff continued to press the issue, he was told to "drop it" and not to bring it up again. (R. 11 ¶ 54.)

After Administrator Marrin was removed from Village Hall in January 2021, Plaintiff considered it his obligation to resume his efforts to correct the ongoing misallocations, and he raised them with her successor, Deborah Waszak, who was hired as Village Administrator in August 2021; Waszak not only dismissed Plaintiff's concerns but was herself engaged in escalating misconduct — including grant manipulation, theft of time, and retaliation against employees who raised concerns — which Plaintiff observed and documented. (R. 11 ¶¶ 61-62, 77, 83, 87-99.)

Beginning in late 2022, after Administrator Waszak refused to act on the concerns Plaintiff had brought to her, Plaintiff escalated his reports of misconduct by Village officials, including Waszak herself, to four elected Village officials and the appointed Village attorney, and requested that an independent investigation be conducted. The Village retained the labor-law firm Clark Baird Smith LLP (CBS) and assigned attorney Raymond Byrne to conduct the investigation. (R. 11 ¶¶ 116-120, 136, 138.)

On March 15, 2023, Plaintiff provided **scheduled testimony to Byrne, as a complainant**, detailing misconduct by both Administrator Waszak and Police Chief Jimmy Lee. Byrne refused to record the testimony, refused to permit Plaintiff to record it, and refused to accept key supporting documents Plaintiff offered. (R. 11 ¶¶ 145–153, 565.) That afternoon, following his scheduled testimony, Plaintiff contacted Mayor Schmit by phone to raise concerns about the CBS investigation and Byrne's conduct and to request the appointment of an independent outside investigator. (R. 11 ¶¶ 175–176.) Plaintiff separately emailed Chief Lee a written letter under the Village's whistleblower policy. Although the letter did not include the full supporting documentation or all details of Plaintiff's complaints, it notified Lee that Plaintiff had provided scheduled testimony to Byrne in the ongoing investigation, stated that Plaintiff feared retaliation for that participation, and asked Lee not to retaliate against Plaintiff or participate in retaliatory conduct. Plaintiff directed the letter to Lee because the Village's whistleblower policy designated Waszak and Lee as auditing officials, while his complaints concerned Waszak and directly implicated Lee, leaving no neutral internal recipient. Lee acknowledged receiving the letter the following afternoon. (R. 11 ¶¶ 100–103, 107, 163, 166–167, 170.)

On March 16, 2023, Mayor Schmit placed Plaintiff on a speakerphone call. Also on the call were Chief Lee — one of the officials Plaintiff had reported — Lee's deputy chief, and Investigator Rob Beach of the Lake County State's Attorney's Office. Plaintiff disclosed some of his concerns to Beach, including prior threats Chief Lee had made against him over Lee's mistaken belief that Plaintiff had reported the misconduct of former Administrator Anne Marrin — the official who had brought Lee into the Village and with whom Lee was closely aligned. With Lee and his subordinate on the call, Plaintiff did not fully detail his complaints. (R. 11 ¶¶ 56, 177-179, 184-185, 187.)

Approximately three and a half hours after Chief Lee acknowledged Plaintiff's letter, the Village placed Plaintiff on administrative leave, with pay and benefits. (R. 11 ¶¶ 171, 190, 566.) That same evening, Lee — one of the officials Plaintiff had just reported — personally participated in a warrantless search of Plaintiff's locked office. The search gave Lee access to the very complaint documentation Plaintiff had prepared against Lee and Administrator Waszak, including materials Plaintiff had attempted to provide to Raymond Byrne during his March 15 testimony. Plaintiff alleged that Lee and Commander Martin removed personal property and that the later warrant process relied on materials discovered during that warrantless search, including complaint documentation concerning Waszak's alleged "theft of time" under the Village's own policy. (R. 11 ¶¶ 4(f), 151–153, 200, 222–223, 256, 260.)

Two days later, on Saturday, March 18, 2023, five officers of the Fox Lake Police Department arrested Plaintiff inside his home — without an arrest warrant, without a search warrant, and without any approved criminal charges. (R. 11 ¶¶ 272-279.) When he was arrested, no criminal charge of any kind existed against Plaintiff — only an eavesdropping allegation, and that allegation had been brought by Chief Lee himself. Lee did not raise it until March 16, 2023 — the day after Plaintiff's scheduled testimony against him and after Plaintiff's letter to Lee — yet it concerned conduct Lee claimed to have witnessed on the evening of March 14, approximately thirteen hours before that testimony. Lee did not raise the allegation with Plaintiff, or as a criminal charge, until after Plaintiff had given his testimony. (R. 11 ¶¶ 156, 349-350, 364, 368.) The burglary and expired FOID card

charges did not exist until afterward; the charges in Lake County Circuit Court Case No. 23CF00000539 followed. (R. 11 ¶¶ 282, 365.)

On March 20, 2023, Plaintiff wrote to the Mayor and the entire Village Board, identifying Administrator Waszak and Chief Lee as the two individuals driving the action against him and asking that no decision on his employment be made until he could be heard. The Mayor responded that same evening, assuring Plaintiff in writing that "no final action will be taken concerning [his] continued employment by the Village without giving [him] an opportunity to be heard." (R. 11, Ex. M.) One week later, on March 27, 2023, Plaintiff wrote again to the Mayor, the Village Board, and the Village Attorney, ensuring their awareness that he had submitted a letter to Chief Lee on March 15, 2023 under the Village's whistleblower policy — before any accusation against him had been raised — and attaching a copy of that letter. (R. 11, Ex. M.)

Being placed on administrative leave in March 2023 caused no change to Plaintiff's pay or benefits. Throughout his administrative leave, Plaintiff received his full salary, kept his group health insurance, and continued to accrue IMRF pension service; he lost no wages, no benefits, and no pension service. (R. 11 ¶¶ 171, 509.)

Through the spring and summer of 2023, the Mayor acknowledged to Plaintiff that the actions Chief Lee had taken against him were retaliatory and an abuse of police authority, assured Plaintiff that the Village would not conduct its own investigation, and stated that Plaintiff needed only to resolve the felonies — which the Mayor and Plaintiff then expected to be settled reasonably quickly — in order to return to work. Village leadership and Plaintiff shared an understanding that any internal investigation would pause while the criminal charges remained pending. (R. 11 ¶¶ 412-417.)

Despite that understanding, in mid-July 2023 — while Plaintiff remained on leave — the Village retained Byrne a second time, no longer to investigate Waszak and Lee, but to investigate Plaintiff himself. (R. 11 ¶ 418.) Byrne interrogated Plaintiff on August 1, 2023, and on August 18, 2023, issued a report claiming that Plaintiff had violated Village policies and recommending his

discipline and termination. (R. 11 ¶¶ 430, 452.) The report became the claimed basis for the Village's actions against Plaintiff. (R. 11 ¶ 454.)

In August 2023, Plaintiff's criminal-defense counsel told him he had "worked it out" with the Village and the prosecution: if Plaintiff resigned, the criminal charges would be dismissed. Plaintiff refused; his objective was reinstatement after nearly three decades of unblemished service. (R. 11 ¶¶ 463, 465-467.)

Plaintiff did not receive Byrne's report until September 25, 2023, when it was delivered to his home, unannounced, as part of an investigative packet — barely a week before the October 2, 2023 executive session at which the Board would consider it. (R. 11 ¶¶ 485-488.) Until that delivery, Plaintiff had had no opportunity to review the investigation's findings or to rebut them. (R. 11 ¶¶ 486, 488-489.)

On October 2, 2023, the Village Board convened an executive session in response to Plaintiff's requests for an opportunity to address the Board and answer its concerns before any decision was made concerning his employment. However, the Board members and the Mayor were instructed by the Village's labor counsel not to speak or ask questions, and Plaintiff was permitted only a one-way statement; the Board did not engage with the rebuttal evidence Plaintiff presented. (R. 11 ¶¶ 487-502.) The Board did not vote on October 2. However, on October 10, 2023, the Village Board voted to suspend Plaintiff without pay pending the criminal charges; the Village notified him of the vote by letter the following day. (R. 11 ¶¶ 503-504, 506.) Until that vote, no Village body had reduced Plaintiff's pay, terminated his benefits, or ended his pension participation. (R. 11 ¶¶ 503, 509.)

Additional adverse actions followed. After the October 10 vote, the Village terminated Plaintiff's group health insurance and, by letter dated November 6, 2023, directed him to continuation coverage at his own expense. (R. 11 ¶¶ 507, 510.) That same November 6 letter purported to terminate Plaintiff's IMRF pension participation retroactive to March 17, 2023. (R. 11 ¶¶ 509-510.)

Separately, the Village released Plaintiff's protected personal information in response to FOIA requests submitted through MuckRock. The September 5, 2023 release included Plaintiff's unredacted Social Security number, date of birth, and home address, together with a false allegation that he had attempted suicide; Plaintiff, who was not the requester, did not learn of that release until October 18, 2023. (R. 11 ¶¶ 341, 343, 473-478, 577.) The Village released protected personal information again on October 10, 2024. (R. 11 ¶¶ 27, 344, 577.)

On April 23, 2025, a Lake County grand jury returned an indictment adding a theft charge to the 2023 eavesdropping and burglary charges. Plaintiff alleges that the indictment was secured through fabricated evidence provided by Village representatives, after dozens of continuances over more than two years. (R. 11 ¶¶ 511-512, 517-518, 616.)

Plaintiff could not reasonably discover the full scope of the wrongful conduct underlying these injuries — including the fabrication of evidence, the falsification of police reports, and the concealment of exculpatory materials — until well into the criminal proceedings. (R. 11 ¶ 34.) Throughout this period, the Village and its retained investigator channeled communications to Plaintiff's criminal-defense counsel rather than to Plaintiff directly. (R. 11 ¶¶ 458-459, 597.)

B. Procedural Background

Plaintiff filed his original complaint in the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois (No. 2025LA00000916), and the action was deemed timely filed as of October 10, 2025 by order of the Honorable Jorge L. Ortiz pursuant to Illinois Supreme Court Rule 9(d)(2). (R. 11, Ex. A.) Defendant removed the action to the Northern District of Illinois on December 11, 2025 (R. 1) and immediately moved to dismiss (R. 4). The district court denied that motion as moot when Plaintiff filed his Amended Complaint on January 5, 2026 (R. 11; R. 15).

Defendant filed a second motion to dismiss on January 16, 2026 (R. 12), arguing that (i) the Amended Complaint violated Federal Rule of Civil Procedure 8(a); (ii) Counts I, II, and III were time-barred under the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/8-101 (one year); (iii) Counts IV and V were time-barred under the two-year limitations period for § 1983 claims; (iv) Counts II and III provided no private right of action; (v) Plaintiff had pleaded probable cause as a matter of law for the underlying criminal charges; and (vi) Plaintiff had failed to plead a *Monell* claim against the Village.

On February 9, 2026, Plaintiff filed his Response in Opposition (R. 18). The Response argued, among other things, that (i) the Illinois Whistleblower Act is a statutory claim not subject to the Tort Immunity Act's one-year tort SOL; (ii) under *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002), the October 10, 2023 Board vote, the November 2023 IMRF termination letter, the November 2023 group-insurance termination, the October 10, 2024 FOIA re-release, and the April 23, 2025 indictment were each discrete actionable acts within their respective limitations periods; (iii) under *Wallace v. Kato*, 549 U.S. 384 (2007), the accrual of Plaintiff's § 1983 claims was governed by federal law and could not have occurred while Plaintiff had no compensable injury; and (iv) under *Holland v. Florida*, 560 U.S. 631 (2010), equitable tolling applied because Plaintiff's criminal-defense attorney had engaged in active interference with Plaintiff's efforts to retain civil counsel — a circumstance the Supreme Court has identified as supporting equitable tolling. (R. 18 at 5-12.)

Plaintiff filed a Notice of Errata on February 17, 2026 (R. 21) withdrawing three citations from his Response brief. Defendant filed its Reply on February 17, 2026 (R. 20).

On April 7, 2026, the district court issued a five-page order granting Defendant's motion in its entirety and dismissing all claims with prejudice. (R. 23.) The court found that the Amended Complaint violated Rule 8(a) but "chose[ ] not to dismiss the complaint solely based on its non-compliance with

Rule 8." (R. 23 at 3.) The court then dismissed Counts I and III as barred by the Tort Immunity Act's one-year period, citing only *Spearman v. Exxon Coal USA, Inc.*, 16 F.3d 722 (7th Cir. 1994), and *Boyles v. Greater Peoria Mass Transit District*, 113 Ill. 2d 545 (1986). (R. 23 at 3.) The court dismissed Count IV under the two-year § 1983 period and Count V on the ground that "the § 1983 action began to accrue on March 18, 2023," the date of arrest. (R. 23 at 4.) The court dismissed Count II for lack of an implied private right of action under the Illinois Identity Protection Act. (R. 23 at 4-5.) The court did not reach *Monell*, probable cause, or sufficiency of pleading. (R. 23 at 5 n.3.)

Most pertinent to this appeal:

First, the district court's order does not mention the October 10, 2023, Board vote at any point. It does not identify October 10, 2023, as a discrete act. It does not analyze whether Plaintiff had a complete and present cause of action on March 18, 2023, capable of supporting damages relief. It does not apply the Illinois discovery rule. It does not address Plaintiff's pleaded fact that he remained on paid administrative leave through October 10, 2023.

Second, the order does not mention Plaintiff's equitable-tolling argument at all. It does not analyze, discuss, accept, or reject the *Holland v. Florida* tolling theory Plaintiff raised in a dedicated section of his Response brief. The order is silent.

Third, the order does not mention or address *Williams v. Office of the Chief Judge of Cook County*, 839 F.3d 617 (7th Cir. 2016), in which this Court expressly held that whether the Tort Immunity Act's one-year SOL applies to Illinois Whistleblower Act claims is unresolved.

Fourth, the order does not address the binding Seventh Circuit accrual rule for First Amendment retaliatory-prosecution claims under *Towne v. Donnelly*, 44 F.4th 666 (7th Cir. 2022), which holds that such claims accrue when the retaliatory charges are brought.

Final judgment was entered April 10, 2026 (R. 31). Plaintiff filed a timely notice of appeal on April 8, 2026 (R. 24) and was granted leave to proceed in forma pauperis on April 10, 2026 (R. 30).

SUMMARY OF ARGUMENT

March 2023 was the retaliatory setup, not the injury. After Plaintiff reported documented misconduct by Administrator Waszak and Chief Lee, the Village placed him on administrative leave with full pay, full benefits, and uninterrupted pension service — leave that deprived him of nothing. The first municipal action that stripped Plaintiff of wages, benefits, and pension participation was the Village Board's October 10, 2023 vote. (R. 11 ¶¶ 171, 503-504, 506, 509.) That vote — not the March 2023 paid leave — is the operative injury underlying Plaintiff's claims for the reinstatement, back pay, front pay, and restored benefits and pension that are the heart of this case. Plaintiff filed suit on October 10, 2025: two years to the day. The district court nonetheless dismissed every count as untimely on one premise — that "all of the conduct underlying these claims occurred in early 2023" (R. 23 at 4) — which cannot survive the well-pleaded allegations, the federal accrual rule of Wallace v. Kato, the Illinois discovery rule, or controlling Illinois authority on the Tort Immunity Act.

First, the dismissal of Count IV rests on an accrual date the Amended Complaint refutes. The Complaint pleads — and the district court had to accept — that Plaintiff remained on paid leave, drawing full salary and benefits, until the Board's October 10, 2023 vote to suspend him without pay. (R. 11 ¶¶ 171, 503-504, 506, 509.) Under Wallace v. Kato, 549 U.S. 384, 388 (2007), a federal claim accrues only when the plaintiff has a "complete and present cause of action." Plaintiff had no compensable injury in March 2023; his § 1983 claim accrued on October 10, 2023 and, filed two years later to the day, is timely. The court fixed accrual at the March 18, 2023 arrest with no reference to Wallace or to the pleaded paid leave, and ignored later discrete acts — the November 2023 loss

of insurance and pension, the October 10, 2024 information re-release, and the April 23, 2025 indictment — each timely under National Railroad Passenger Corp. v. Morgan.

Second, the dismissal is also wrong under the Illinois discovery rule. Under Knox College v. Celotex Corp., 88 Ill. 2d 407, 415 (1981), a claim accrues only when the plaintiff knows or should know of both the injury and its wrongful cause. Plaintiff did not receive the investigative materials underlying the October 10, 2023 vote until September 25, 2023, and did not learn of the September 5, 2023 FOIA release of his unredacted Social Security number until October 18, 2023. Foundational documents bearing on the wrongful cause of the prosecution remain undisclosed; as to those facts the clock has not begun to run.

Third, the district court reversibly erred by failing to address Plaintiff's properly preserved equitable-tolling argument. Plaintiff's Response raised Holland v. Florida, 560 U.S. 631 (2010), in a dedicated section and alleged attorney interference of the kind the Supreme Court recognizes as supporting tolling; Maples v. Thomas, 565 U.S. 266 (2012), independently treats attorney abandonment as an extraordinary circumstance. The order does not mention Holland, analyze either tolling prong, or explain why tolling is unavailable. Silent rejection of a material preserved argument is reversible error.

Fourth, the dismissal of Count I under the Tort Immunity Act's one-year period ignores controlling Seventh Circuit precedent. In Williams v. Office of the Chief Judge of Cook County, 839 F.3d 617, 626 (7th Cir. 2016), this Court held it "unclear under Illinois law" whether that period applies to Illinois Whistleblower Act claims. The only authorities the district court cited — Spearman and Boyles — addressed the common-law retaliatory-discharge tort, not the statutory IWA, which carries its own integrated remedies; the five-year residual period of 735 ILCS 5/13-205 governs. And even if the one-year period reached tort damages, it would not bar Plaintiff's equitable, make-whole

relief: the Illinois Supreme Court has squarely held the Act does not bar claims for "relief other than damages." Raintree Homes, Inc. v. Village of Long Grove, 209 Ill. 2d 248, 257-58 (2004). Because reinstatement, back pay, front pay, and restored benefits are the relief Plaintiff seeks, Raintree Homes independently defeats the dismissal of Count I.

Fifth, the same errors govern Count III under the Public Officer Prohibited Activities Act — a statutory cause of action to which the five-year residual period and Raintree Homes apply with equal force. Plaintiff has also satisfied, or is excused from, the Act's reporting requirements, because every designated auditing official was himself a subject of his reports or a participant in the retaliation.

Sixth, Count V (First Amendment retaliatory prosecution) does not accrue at arrest. Binding precedent holds that such a claim accrues when the retaliatory charges are brought. Towne v. Donnelly, 44 F.4th 666 (7th Cir. 2022). The act Count V challenges is the April 23, 2025 grand jury indictment, which added a theft charge absent from the 2023 allegations and which, Plaintiff alleges, was procured through fabricated evidence — filed October 10, 2025, it was brought within six months of accrual. The district court fixed accrual at the 2023 arrest and relied on Gekas and Hileman without applying Towne; and the Village's own irreconcilable positions on Count V require reversal on either branch.

Seventh, the dismissal of Count II (Illinois Identity Protection Act) for want of a private right of action is preserved for review, though Plaintiff does not press it as a principal basis for reversal.

Eighth, at a minimum, the district court abused its discretion in dismissing the entire Amended Complaint with prejudice and without leave to amend. Plaintiff requested leave to amend, yet the court conducted no futility analysis. Where futility is not shown and a pro se plaintiff requests leave to amend, dismissal with prejudice is an abuse of discretion. Foman v. Davis, 371 U.S. 178,

182 (1962); Runnion ex rel. Runnion v. Girl Scouts of Greater Chicago & Northwest Indiana, 786 F.3d 510, 519-20 (7th Cir. 2015).

STANDARD OF REVIEW

This Court reviews de novo the grant of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), accepting all well-pleaded factual allegations of the complaint as true and drawing all reasonable inferences in favor of the plaintiff. *Adams v. City of Indianapolis*, 742 F.3d 720, 728 (7th Cir. 2014); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). Pro se complaints are construed liberally and held to less stringent standards than formal pleadings drafted by lawyers. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam); *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). The accrual date of a cause of action is a question of law reviewed de novo. *Wallace v. Kato*, 549 U.S. 384, 388 (2007) ("the accrual date of a § 1983 cause of action is a question of federal law that is not resolved by reference to state law"). Because review is de novo, this Court considers all legal issues preserved below, whether or not the district court addressed them. A district court's denial of leave to amend is reviewed for abuse of discretion, *Runnion*, 786 F.3d at 519, but an order denying leave to amend without considering the requirements of Rule 15(a)(2) is itself reversible error.

ARGUMENT

I. The district court erred in applying the Tort Immunity Act's one-year limitations period to Plaintiff's statutory Illinois Whistleblower Act claim (Count I).

The district court dismissed Count I (Illinois Whistleblower Act, 740 ILCS 174/15) on the ground that it is barred by the Tort Immunity Act's one-year SOL, 745 ILCS 10/8-101. (R. 23 at 3.) The order cited only *Spearman v. Exxon Coal USA, Inc.*, 16 F.3d 722 (7th Cir. 1994), and *Boyles v. Greater Peoria Mass Transit District*, 113 Ill. 2d 545 (1986). Neither case supports the conclusion. Both addressed the common-law retaliatory-discharge tort. Neither addressed the statutory Illinois

Whistleblower Act — which did not exist at the time of *Boyles* and which is structurally and remedially distinct from the common-law tort. This Court has expressly recognized that the IWA-SOL question is unsettled.

A. This Court in Williams expressly held the question unsettled.

In *Williams v. Office of the Chief Judge of Cook County*, 839 F.3d 617, 626 (7th Cir. 2016), this Court considered the application of the Tort Immunity Act's one-year limitations period to claims under the Illinois Whistleblower Act and stated: "It is unclear under Illinois law whether this statute of limitations applies to retaliatory discharge claims under the Illinois Whistleblower Act, although one appellate court seemed to suggest that it might." 839 F.3d at 626 (citing *Taylor v. City of Chicago*, 10 N.E.3d 383, 395 (Ill. App. Ct. 2014)). This Court declined to resolve the question and decided the case on other grounds. That a single intermediate appellate decision "seemed to suggest" a possible answer did not settle the question — *Williams*, the most recent word from this Court on the issue, examined that decision and still described the question as "unclear."

Read directly, the decision *Williams* cited gives the question no answer adverse to Plaintiff. That decision — *Taylor v. Board of Education of the City of Chicago*, 2014 IL App (1st) 123744, 10 N.E.3d 383 — did not apply the Tort Immunity Act at all. At the page *Williams* pin-cited, the *Taylor* court addressed the temporal scope of recoverable damages: it explained that the plaintiff there "had no right of action against the Board under the [Whistleblower] Act until January 1, 2008," and on that basis approved a jury instruction barring recovery for retaliatory acts predating that date. 10 N.E.3d at 395. That is a statutory-coverage and accrual point — fixing when a Whistleblower Act cause of action first arose against the defendant — not a holding that the Tort Immunity Act's one-year limitations period governs such a claim. *Taylor* therefore neither resolves the question *Williams* left open nor supplies any authority for applying the one-year period to Plaintiff's statutory claim.

That recognition by this Court is binding here. The district court's order does not cite or address *Williams*. The order treats the application of the TIA's one-year SOL as settled, but this Court has expressly held it is not. The error is straightforward.

Nor does the Tort Immunity Act's definition of "civil action" close the question. The Act defines "civil action" as "any action, whether based upon the common law or statutes or Constitution of this State." 745 ILCS 10/8-101(c). But that definition identifies what may be a civil action; it does not establish that a later-enacted statutory claim, carrying its own integrated remedial scheme, is governed by the Act's general one-year period rather than the residual statutory period. Had the broad "civil action" language resolved the matter, this Court would not have described the question as unsettled in *Williams*.

B. Spearman and Boyles addressed the common-law retaliatory-discharge tort, not the statutory IWA.

Spearman, 16 F.3d 722, was a federal-court diversity case applying Illinois law to a common-law retaliatory-discharge claim. The Seventh Circuit applied the TIA's one-year SOL because, under Illinois law as it then existed, retaliatory discharge was a tort and *Spearman* treated it as such. The Court did not consider any statutory whistleblower claim because the Illinois Whistleblower Act, 740 ILCS 174/1 et seq., did not exist as currently enacted; the statute under that title was created by P.A. 93-544, effective January 1, 2004 — a decade after *Spearman*. The Illinois Whistleblower Act under which Plaintiff sues is a different statute, with different elements, different remedies, and a different statutory framework.

Boyles, 113 Ill. 2d 545, addressed a common-law retaliatory-discharge claim against a public transit district; its holding concerned municipal immunity from punitive damages under the Tort Immunity Act. *Id.* at 552-54. *Boyles* did not address any statute of limitations, let alone the application of the one-year period to a statutory Illinois Whistleblower Act claim. Like *Spearman*, it

predates the current Act by nearly two decades and could not have addressed the statutory cause of action under which Plaintiff sues.

Neither *Spearman* nor *Boyles* therefore controls the question whether the TIA's one-year SOL applies to a *statutory* Illinois Whistleblower Act claim with its own integrated remedial framework. That question is, as *Williams* recognized, unsettled. The Village's contrary authority does not change this. *Halleck v. County of Cook*, 264 Ill. App. 3d 887 (1st Dist. 1994) — on which the Village's authority *Padilla* relied — addressed the common-law retaliatory-discharge tort and, like *Spearman* and *Boyles*, predates the Illinois Whistleblower Act by a decade.

C. The five-year residual catchall in 735 ILCS 5/13-205 applies.

Illinois's five-year residual SOL applies to "[a]ll civil actions not otherwise provided for." 735 ILCS 5/13-205. The Illinois Supreme Court has consistently applied the five-year residual to statutory causes of action that lack their own integrated SOL. The Illinois Supreme Court reaffirmed this principle in *Tims v. Black Horse Carriers, Inc.*, 2023 IL 127801, holding that the Biometric Information Privacy Act "is subject to the default five-year limitations period found in section 13-205 of the Code." *Id.* The Court reached that conclusion because the Act lacked its own limitations period, the subsections were causes of action "not otherwise provided for," and applying the five-year residual ensured "certainty, predictability, and uniformity." *Id.* Because the Illinois Whistleblower Act provides no SOL of its own, the five-year residual is the natural default.

Plaintiff's claims, even under the most rigorous accrual analysis, fall comfortably within the five-year residual. The latest discrete acts (the April 23, 2025 indictment and the October 10, 2024 FOIA re-release) occurred within months of filing; the principal injuries (the October 10, 2023 Board vote, the November 2023 IMRF letter, the actual November 6, 2023 IMRF termination, the November 2023 group-insurance termination) occurred within two years of filing. Even on the Village's most aggressive accrual theory — March 16, 2023 — the five-year residual would not run until March 16, 2028. The claim was timely under any Illinois SOL longer than one year.

D. Even if the TIA applied to tort damages, it does not bar Plaintiff's claims for equitable relief or back pay — Raintree Homes controls.

Even on the assumption that the TIA's one-year SOL applied to retaliatory discharge tort claims for *damages*, that limitations period would not extend to Plaintiff's claims for *equitable* relief. The TIA itself recognizes this distinction: 745 ILCS 10/2-101 provides that "Nothing in this Act affects the right to obtain relief other than damages," and the Illinois Supreme Court has squarely held that § 8-101's one-year SOL does not bar such claims.

In *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248 (2004), the Illinois Supreme Court held that the TIA's one-year SOL did not apply to claims for restitution of impact fees against a municipality. The Court reasoned that § 8-101 applies to actions for damages, and that claims for restitution, recovery of money paid, equitable accounting, and similar non-damages remedies fall outside the TIA's scope. *Id.* at 257-58. The Court held the five-year residual under 735 ILCS 5/13-205 governed instead. *Id.* at 261. *Raintree Homes* is the controlling Illinois Supreme Court authority on whether the TIA's one-year SOL applies to claims seeking "relief other than damages." It does not.

The Illinois Appellate Court has applied *Raintree Homes* in this same context, holding that the five-year residual SOL — not the TIA's one-year SOL — governs actions against local public entities seeking equitable relief. *Harvest Church of Our Lord v. City of East St. Louis*, 2011 IL App (5th) 100526; *see also Prorok v. Winnebago County*, 2017 IL App (2d) 161032 (statutory employment claims against local entities not bound by TIA one-year SOL); *Collins v. Town of Normal*, 2011 IL App (4th) 100694 (same).

The Illinois Whistleblower Act's remedial framework is squarely within *Raintree Homes*'s carve-out. Section 30 of the Act authorizes "all relief necessary to make the employee whole," expressly enumerating, as appropriate: (1) reinstatement with the same seniority status the employee would have had but for the violation; (2) back pay, with interest; (3) front pay; (4) payment of medical and other benefits; (5) compensation for costs incurred as a result of the violation, including litigation

costs, expert witness fees, and reasonable attorney's fees; and (6) a statutory civil penalty payable to the employee. 740 ILCS 174/30. Reinstatement is the paradigmatic form of equitable relief. Front pay is the well-established equitable substitute for reinstatement where reinstatement is impractical. Back pay, in the context of integrated statutory employment-remedy frameworks of this kind, is treated as an integral component of make-whole equitable relief, not as common-law damages. Each of these remedies is "relief other than damages" within the meaning of 745 ILCS 10/2-101 and falls outside the Tort Immunity Act's one-year limitations period under *Raintree Homes*. Plaintiff's Amended Complaint specifically requests reinstatement, restoration of pension and benefits, back pay, front pay, and make-whole relief under this statutory framework. (R. 11, Prayer for Relief.)

On any reading of the IWA's remedial provisions, Plaintiff's claims for reinstatement, restoration of IMRF participation, restoration of accrued vacation and benefits, back pay, front pay, and the full panoply of make-whole relief are claims for "relief other than damages" that fall within § 2-101 of the TIA and *Raintree Homes*'s holding. Even if the Court were to adopt the most aggressive reading of the TIA's one-year SOL urged by the Village, that SOL could not bar these claims.

E. Padilla v. County of Cook is distinguishable on multiple grounds, the most fundamental of which is that Padilla predates the Illinois Whistleblower Act under which Plaintiff sues.

The Village relied below, and may continue to rely, on *Padilla v. County of Cook*, 100 F. Supp. 2d 1145 (N.D. Ill. 2000), as support for the proposition that the TIA's one-year SOL applies to claims under the Illinois Whistleblower Act. *Padilla* does not bear that weight. It is distinguishable on four independent grounds.

First, and most fundamentally: *Padilla* was decided in 2000. The Illinois Whistleblower Act under which Plaintiff sues, 740 ILCS 174/1 et seq., was enacted by P.A. 93-544 effective January 1, 2004 — four years after *Padilla*. *Padilla* therefore could not have addressed, and did not address, the statute under which Plaintiff brings Count I, with its integrated remedial framework (740 ILCS 174/30).

Second, *Padilla* is a federal district court decision and is not binding precedent in this Court or in any Illinois court. The Illinois Appellate Court has not adopted *Padilla*'s reasoning. The Illinois Supreme Court has not adopted *Padilla*'s reasoning. The Seventh Circuit has not adopted *Padilla*'s reasoning, and to the contrary, has expressly recognized in *Williams* that the question of whether the TIA's one-year SOL applies to IWA claims is unsettled. A single, twenty-six-year-old district-court opinion addressing a different statute cannot supply the certainty the district court ascribed to it.

Third, *Padilla* predates this Court's recognition in *Williams* (2016) that the question is unsettled. To the extent *Padilla*'s analysis would otherwise be persuasive, *Williams* supersedes it as the Seventh Circuit's most recent statement on the issue.

Fourth, *Padilla* addressed only *damages* relief and did not address the "relief other than damages" carve-out in 745 ILCS 10/2-101. The Illinois Supreme Court did not resolve that carve-out issue until *Raintree Homes* in 2004 — four years after *Padilla*. To the extent *Padilla*'s reasoning could be read to extend to equitable relief, it is superseded by *Raintree Homes*.

II. The dismissal of Count III (Public Officer Prohibited Activities Act) was reversible for the same reasons as Count I, and Plaintiff has satisfied the Act's statutory reporting requirements.

The Public Officer Prohibited Activities Act, 50 ILCS 105/4.1, creates a statutory cause of action separately from the common-law retaliatory-discharge tort. The district court applied the TIA's one-year SOL to Count III by reference to its analysis of Count I. (R. 23 at 3.) For the same reasons developed in Argument I — the statutory nature of the claim, the absence of any controlling Illinois authority applying the TIA's one-year SOL to POPAA claims, the application of the five-year residual in 735 ILCS 5/13-205, the carve-out in 745 ILCS 10/2-101 for "relief other than damages," and the controlling holding of *Raintree Homes* — the dismissal of Count III is reversible. Plaintiff incorporates the analysis of Argument I as fully set forth in connection with Count III.

Plaintiff anticipates one defense the Village did not raise below but may raise here. Section 4.1(b) requires an employee, to invoke the Section's protections, to make a written report of improper governmental action to the appropriate auditing official, and to report any retaliation to that official within 60 days of learning of it. 50 ILCS 105/4.1(b). The Amended Complaint's allegations, accepted as true, foreclose dismissal on this ground for three reasons. First, Plaintiff did report in writing: on March 15-16, 2023 he submitted a written complaint to Chief Lee, a designated auditing official under the Village's own whistleblower policy. (R. 11 ¶¶ 100-103, 163-170, 584.) Second, because the designated auditing officials — Waszak and Lee — were themselves the subjects of Plaintiff's report and participants in the retaliation, Section 4.1(b) authorized Plaintiff to report instead to "any State's Attorney," which he did, disclosing the misconduct to Investigator Rob Beach of the Lake County State's Attorney's Office on March 16, 2023. (R. 11 ¶¶ 177-187, 584.) Third, as to the separate 60-day retaliation-reporting requirement, the Amended Complaint alleges that compliance was impossible because every auditing official and the alternative State's Attorney channel was engaged in the misconduct or coordinating the retaliation (R. 11 ¶ 586), and alleges a continuing course of retaliation, each act restarting the period (R. 11 ¶¶ 587-588). At the pleading stage these allegations are accepted as true, and the reporting requirement cannot support dismissal under Rule 12(b)(6).

III. The dismissal is reversible because the later distinct injuries giving rise to Plaintiff's claims did not accrue in March 2023, when Plaintiff was on paid administrative leave, and the complaint filed within two years of the first municipal action causing compensable injury.

Although the Village now characterizes March 2023 as a unified accrual moment, the Amended Complaint pleads, and the district court was required to accept, that Plaintiff was placed on paid administrative leave on March 16, 2023, continued to receive full salary and benefits, and did not lose any wages or benefits until the Village Board voted to suspend him without pay on October 10, 2023. (R. 11 ¶¶ 171, 503-04, 506, 509, 589(c).) Plaintiff filed suit on October 10, 2025. The dismissal of Count IV as time-barred under the two-year § 1983 SOL therefore cannot rest on the March 18, 2023 arrest date: the operative discrete acts giving rise to Plaintiff's actionable

economic injury all postdate the Board's October 10, 2023 vote, which itself fell two years to the day before filing.

The district court's March 2023 accrual conclusion does not engage with the deeper structural question. Treating the placement on paid administrative leave on March 16, 2023 as a completed cause of action capable of triggering the limitations clock for all claims and all injuries collapses analytically distinct events. Three doctrines independently establish that, even if the Village's March 2023 framing were partially correct for some theory of liability, the later distinct injuries on which Plaintiff's actual damages claims rest did not accrue in March 2023: (a) federal accrual doctrine under *Wallace v. Kato*; (b) the Illinois discovery rule under *Knox College*; and (c) the discrete-acts framework under *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002).

A. Under Wallace v. Kato, a § 1983 cause of action accrues only when the plaintiff has a complete and present cause of action.

The Supreme Court has held that the accrual date of a § 1983 cause of action is a question of federal law. *Wallace v. Kato*, 549 U.S. 384, 388 (2007). Under federal law, a cause of action accrues "when the plaintiff has 'a complete and present cause of action,' that is, when 'the plaintiff can file suit and obtain relief.'" *Id.* (citation omitted). The Court in *Wallace* was emphatic that the federal-law accrual standard governs, regardless of any state-law presumptions about when state-law claims would accrue. *Id.* at 388-89.

Applied here, the rule is dispositive. On March 16, 2023, Plaintiff was placed on paid administrative leave. The Village's own pleaded representations confirm the leave was "with full pay and benefits" — both in the Fox Lake Police Department's contemporaneous Report 23-01724 and in Mayor Schmit's text message of the same date confirming "administrative leave, with pay and benefits." (R. 11 ¶ 589(c).) Plaintiff retained his full salary; his health insurance continued; his IMRF contributions continued. He had suffered no economic loss. He had no compensable damages. Courts have repeatedly recognized, in the closely related retaliation context, that placing a public employee

on administrative leave or suspension with pay pending an investigation imposes no adverse employment consequence. *See Bell v. Sheriff of Broward Cty.*, 6 F.4th 1374, 1377-78 (11th Cir. 2021) (suspension with pay pending investigation is not an adverse action, and collecting authority); *Breaux v. City of Garland*, 205 F.3d 150, 157-58 (5th Cir. 2000) (employee placed on paid administrative leave "suffered no adverse action with respect to the leave"); *Sensabaugh v. Halliburton*, 937 F.3d 621, 631 (6th Cir. 2019) (suspension with pay does not constitute an adverse action).

Had Plaintiff sued in March 2023, the only relief available would have been declaratory or injunctive; he could not have recovered damages for lost wages, terminated benefits, or pension forfeiture, because none yet existed. The Village's contrary position — that paid leave triggered a clock that ran before the unpaid suspension occurred — would require a plaintiff to sue before sustaining the injury for which he seeks compensation, the very result *Wallace* forecloses. *Cf. McDonough v. Smith*, 588 U.S. 109, 119 (2019) (deferring accrual until the plaintiff has a "complete and present cause of action").

The Amended Complaint, accepted as true, alleges that Plaintiff remained on paid leave until the Board's October 10, 2023 vote, received his last full paycheck before that vote, kept group health insurance until after that vote, and that the IMRF's own records reflect an actual termination date of November 6, 2023 — notwithstanding the Village's November 6, 2023 letter, which claimed a benefits cutoff backdated to March 17, 2023 that the IMRF did not honor. (R. 11 ¶¶ 503-04, 506, 509-10.) None of these injuries existed on March 18, 2023; Plaintiff's § 1983 claim for retaliatory deprivation of his property interest in continued public employment did not accrue until, at the earliest, that October 10, 2023 vote.

This is no novel application of *Wallace*: the Seventh Circuit has consistently held that § 1983 claims do not accrue until the plaintiff has suffered the injury for which he seeks redress. *Logan v. City of Chicago*, 4 F.4th 529, 537 (7th Cir. 2021); *Liberty v. City of Chicago*, 860 F.3d 1017, 1019

(7th Cir. 2017). The district court made no such inquiry; it simply declared that "the § 1983 action began to accrue on March 18, 2023." (R. 23 at 4.)

B. Under Illinois law, the discovery rule requires knowledge of both the injury and its wrongful cause — and the wrongful-cause inquiry remains incomplete today.

For Plaintiff's state-law claims (Counts I, II, III), the Illinois discovery rule operates as an additional, independent ground precluding the March 2023 accrual the district court adopted. Under *Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 415 (1981), a cause of action accrues only when the injured party "knows or reasonably should know of his injury and also knows or reasonably should know that the injury was wrongfully caused." The Illinois Supreme Court has repeatedly applied this rule, requiring both elements — injury and wrongful causation — to be known or reasonably knowable before accrual occurs.

Plaintiff did not have such knowledge in March 2023. Four pleaded facts establish this:

First, Plaintiff did not see the Clark Baird Smith investigative materials — the basis for the Board's eventual October 10, 2023, vote — until September 25, 2023. (R. 11 ¶¶ 485-489.) Until that date, Plaintiff did not know what wrongful representations had been made about him to the Board, did not know what investigative conclusions had been drawn, and could not have identified the basis for any wrongful causation of an as-yet-nonexistent injury.

Second, Plaintiff did not learn the contents of the Village's September 5, 2023 FOIA release of his protected personal information — including his unredacted Social Security number, date of birth, and home address, and a false allegation that he had attempted suicide — until October 18, 2023. (R. 11 ¶¶ 343, 473-78, 577.) That release was made to a third-party MuckRock requester; Plaintiff was not the requester and was not notified of the production. Under *Knox College*, the cause of action for the disclosure of protected information accrued no earlier than October 18, 2023.

Third, and most fundamentally: several categories of foundational documents bearing on the wrongful cause of the prosecution and the indictment remain undisclosed to Plaintiff today. Plaintiff

has never been provided the search warrant affidavit on which the March 17, 2023 warrant rested. Plaintiff has never been provided the grand jury transcripts, including the transcript of testimony before the grand jury that returned the April 23, 2025 indictment. Plaintiff has never been provided the criminal-case discovery materials — enumerated as 138 items — including police reports, witness statements, forensic reports, and evidence logs. In addition, Plaintiff's own contemporaneous investigative notes, the complaint packet he had prepared for his March 15, 2023 scheduled testimony, the original purchasing receipts and authorizations bearing on the items later alleged to have been "stolen," and other clearly labeled personal property — including external hard drives marked "Personal Property of Ryan C. Kelly" and materials labeled "Attorney-Client Privileged" — were seized from Plaintiff in March 2023. (R. 11 ¶¶ 240, 241, 529-32.) Those items were not returned to Plaintiff; instead, the State's Attorney's Office released them to Raymond Byrne, the Village's own contracted investigator and Plaintiff's litigation adversary. (R. 11 ¶¶ 243, 531.) That release was a discrete wrongful act distinct from the original seizure: it placed Plaintiff's privileged litigation materials in the hands of the very adversary building the case against him. Plaintiff could not have known, when his property was seized, that it would be routed to the Village's investigator rather than safeguarded as evidence; that wrongful cause was concealed from him. Throughout the relevant period, the Village has refused to engage with Plaintiff directly regarding the allegations, routing all substantive communications through the very criminal-defense counsel whose interference with Plaintiff's efforts to retain civil counsel forms the substance of Plaintiff's equitable-tolling allegations. As to certain wrongful-cause facts material to Plaintiff's claims, the *Knox College* inquiry has not been completed, let alone exhausted in time to start the limitations clock.

The district court did not apply the discovery rule. Its order does not cite *Knox College* or any Illinois discovery-rule authority. It does not analyze whether Plaintiff had the requisite knowledge as of March 2023. The order's silence on this point is reversible error. *See Adams*, 742 F.3d at 728 (well-pleaded factual allegations must be accepted as true).

C. The October 10, 2023 Board vote was the first municipal action causing Plaintiff compensable injury — Plaintiff filed exactly two years later.

Both the federal accrual rule and the Illinois discovery rule point to the same operative date: October 10, 2023. That is the day on which:

(i) The Village Board, by formal vote, exercised its policymaking authority to suspend Plaintiff without pay. (R. 11 ¶¶ 503-04, 506.) Until that vote, the Board had taken no action that altered Plaintiff's pay or benefits.

(ii) Plaintiff lost his right to continued compensation, the principal property interest at stake in this litigation.

(iii) Plaintiff's IMRF participation prospectively ended (notwithstanding the Village's later, ineffective attempt to backdate the termination, an injury whose actual occurrence the IMRF's own records date to November 6, 2023).

(iv) Plaintiff's eligibility for continued group health insurance ended, driven by the October 10 vote.

That the Board needed to vote on October 10, 2023 is itself dispositive of the accrual question. If the Village's position is correct — that the suspension-without-pay decision was already made in March 2023 — then no Board vote in October would have been required, and the Board's October 10, 2023 action would have been a formality with no legal effect. But the Board did vote, and its vote did have legal effect: it converted paid leave to unpaid suspension. The vote's necessity is the Village's own institutional admission that no operative decision to suspend pay had been made before October 10, 2023. The Village cannot have it both ways. Either the March 2023 placement on paid leave was the operative adverse employment action (in which case the Village must identify the compensable damages it caused, and there are none), or the October 10, 2023 Board vote was the operative adverse employment action (in which case Plaintiff's October 10, 2025 filing is timely by federal-rule arithmetic).

Plaintiff filed his complaint on October 10, 2025 — exactly two years from the date of the Board's vote. (R. 11, Ex. A.) That filing is timely under the § 1983 two-year SOL, *see Owens v. Okure*, 488 U.S. 235, 250 (1989); *Liberty*, 860 F.3d at 1019, and — as developed in Argument I — under every other limitations period potentially applicable to Plaintiff's state-law claims.

The October 10, 2023 Board vote is a discrete and independent municipal action attributable to the Village under *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480-81 (1986). A single decision by a final policymaker constitutes municipal action for purposes of § 1983 — even absent any generalized policy or custom. *Id.* The Village Board is the body with final policymaking authority over Plaintiff's employment. Its October 10, 2023 vote, by formal action of the policymaker, completed both the constitutional violation and the resulting injury. To the extent the Village argues that the persons whose alleged retaliatory conduct preceded the vote (Chief Lee, Village Administrator Waszak, and investigator Byrne) lacked policymaking authority, that argument addresses Monell — which the district court did not reach — and does not bear on accrual. The Board's adoption of those subordinates' recommendations completes the chain of liability under *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988), and *Valentino v. Village of South Chicago Heights*, 575 F.3d 664, 676 (7th Cir. 2009).

The Village cannot escape the consequence of the October 10, 2023 vote by pointing to the subsequent departures of the individuals whose retaliatory conduct preceded it. Under *Staub v. Proctor Hospital*, 562 U.S. 411 (2011), where a biased subordinate's action is intended to cause, and is a proximate cause of, an adverse decision by the ultimate decisionmaker, the bias is imputed to the decisionmaker and the employer is liable. The Supreme Court expressly held that the formal "independence" of the ultimate decisionmaker does not shield the employer: "if the independent investigation relies on facts provided by the biased supervisor — as is necessary in any case of cat's-paw liability — then the employer (either directly or through the ultimate decisionmaker) will have effectively delegated the factfinding portion of the investigation to the biased supervisor." *Id.* at 421. The Seventh Circuit has adopted this framework for retaliation claims. *Smith v. Bray*, 681 F.3d 888,

897 (7th Cir. 2012) (cat's-paw theory supports entity liability for retaliation under Title VII, § 1981, and § 1983).

The Amended Complaint pleads exactly the cat's-paw influence chain *Staub* contemplates. The Board's decision "was based solely on Byrne's incomplete and biased August 18, 2023, report — a report that had ignored exculpatory evidence and relied on witnesses with conflicts of interest." (R. 11 ¶ 502.) The motion to suspend Plaintiff "explicitly cited Byrne's August 18, 2023, report." (*Id.* ¶ 504.) Byrne had refused to accept the exculpatory documentation Plaintiff repeatedly offered. (*Id.* ¶ 505.) Byrne was, in turn, the same investigator who had earlier suppressed Plaintiff's scheduled testimony of March 15, 2023 and who shared retaliatory motive with Chief Lee and Administrator Waszak. (*Id.* ¶¶ 145–53, 502.) That the Village later parted ways with Lee and Waszak, but retained Byrne for a second engagement (*id.* ¶ 418) and promoted Rudkin to Finance Director, only confirms that the Village adopted — rather than disowned — the tainted investigation that produced the October 10, 2023 vote. Under *Staub* and *Smith v. Bray*, that adoption is dispositive of any "those individuals are gone" defense to the operative October 10, 2023 vote.

The October 2–10, 2023 sequence confirms that the Board's vote completed the causal chain rather than breaking it. At the October 2 executive session the Board and Mayor were instructed by the Village's labor counsel not to speak or ask questions, and Plaintiff was allowed only a one-way statement. (R. 11 ¶¶ 499-502.) Eight days later the Board voted to suspend Plaintiff without pay in a motion expressly citing Byrne's biased August 18, 2023 report. (R. 11 ¶¶ 503-04.) A decisionmaker that refuses to ask questions and then votes on the biased investigator's report has not conducted the independent investigation that severs cat's-paw causation; it has adopted the taint. That adoption is itself a basis for municipal liability under *Monell*. (R. 11 ¶ 612(d).)

D. Even under the Village's own initial accrual theory, Count IV was timely filed.

The October 10, 2023 accrual date established above is not a date the Village disputes. It is the date the Village itself identified in its first motion to dismiss. That motion — directed at the

original complaint, in which the § 1983 claim now numbered Count IV was designated Count III — argued that "all of the acts referenced occurred, at the latest, on October 10, 2023, when the Board voted to suspend Kelly without pay," and that "Kelly's claims in Count III thus lapsed on October 10, 2025." (R. 4 at 8.) The Village identified no earlier accrual date for that claim and applied no "delayed injury" theory to it. Its sole stated ground for untimeliness was the filing date — that "Kelly did not file his Complaint until October 15, 2025." (R. 4 at 9.) The Village's argument depended entirely on the five-day interval between the deadline it computed, October 10, 2025, and the date it asserted Plaintiff filed, October 15, 2025.

That interval does not exist. The Circuit Court of the Nineteenth Judicial Circuit deemed Plaintiff's complaint filed as of October 10, 2025, under Illinois Supreme Court Rule 9(d)(2). (R. 11, Ex. A.) October 10, 2025 is the precise date the Village's own motion identified as the limitations deadline. Measured from the accrual date the Village itself identified — October 10, 2023 — and filed on the deadline the Village itself computed — October 10, 2025 — Count IV is timely.

The Village did not hold to that analysis. In its operative motion, directed at the Amended Complaint, the Village relocated the accrual of the § 1983 claim from October 10, 2023 to March 2023, recharacterizing the October 10, 2023 unpaid suspension as "nothing more than a delayed injury from the single, overt act of suspending him" months earlier. (R. 12 at 10.) The district court adopted that later position, holding that "the § 1983 action began to accrue on March 18, 2023." (R. 23 at 4.) The dismissal of Count IV thus rests on an accrual date earlier — and more adverse to Plaintiff — than the date the Village itself advanced in its first motion. The well-pleaded allegations the district court was required to credit place the first compensable injury on October 10, 2023, when the Board voted to suspend Plaintiff without pay. (R. 11 ¶¶ 503-504, 506.) Count IV accrued on that date; filed two years later to the day, it is timely — as the Village's own first motion confirms.

E. Multiple discrete adverse acts occurred within the limitations period for each claim.

Even setting aside the foregoing accrual analysis, the Amended Complaint pleads multiple discrete adverse acts within the limitations periods for each claim. Under *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 113-14 (2002), each discrete adverse act "constitutes a separate actionable 'unlawful employment practice'" that "starts a new clock for filing charges alleging that act." The Village's effort to collapse these discrete acts into a single March 2023 accrual point fails as a matter of *Morgan*'s framework.

Within two years of Plaintiff's October 10, 2025, filing, the following discrete adverse acts occurred:

(1) October 10, 2023: the Village Board voted to suspend Plaintiff without pay. (R. 11 ¶¶ 503-04, 506.)

(2) Following the October 10, 2023, vote, and by the Village's November 6, 2023, letter: the Village terminated Plaintiff's group health insurance and directed him to continuation coverage at his own expense. (R. 11 ¶¶ 503-04, 506, 510.)

(3) In November 2023: the Village's acting Assistant Village Administrator issued a letter purporting to terminate Plaintiff's IMRF participation retroactive to March 17, 2023 — an attempted retroactive termination that the IMRF did not honor. The Village's contemporaneous representations were inconsistent across three different sources: the November letter claimed retroactive termination effective March 17, 2023; the Board's authorizing vote occurred October 10, 2023; and the IMRF's own records reflect an actual termination date of November 6, 2023. The letter is itself a discrete adverse act. The substantive injury — actual loss of IMRF participation — occurred on November 6, 2023.

(4) On or about November 6, 2023: Plaintiff's IMRF participation was actually terminated, as documented by the IMRF's own records.

(5) On October 10, 2024: the Village made a separate FOIA release through MuckRock that included additional protected personal information. (R. 11 ¶¶ 27, 344, 577; R. 19, Ex. 1.) This release occurred more than one year after the original September 5, 2023 release and over a year after the Village had been on notice that its production methods had disclosed exempt protected information.

(6) On April 23, 2025: the Lake County grand jury returned the indictment that added a new theft charge. (R. 11 ¶¶ 511-23, 616-19.)

Each of these acts is independently actionable. Each starts its own limitations clock. *Morgan*, 536 U.S. at 113-14. The district court did not analyze any of them. Its order does not mention the October 10, 2023, Board vote, the November 2023 group-insurance termination, the November 2023 IMRF termination letter, the November 6, 2023, actual IMRF termination, the October 10, 2024, FOIA re-release, or the April 23, 2025 indictment as discrete acts. It collapses them all into March 2023 by assertion. That is reversible error.

The discrete-act principle applies with particular force to Plaintiff's lost-wages injury, reinforced by the paycheck-accrual rule: each paycheck that carries forward an earlier unlawful pay decision is a separate actionable wrong with its own limitations period. *See Bazemore v. Friday*, 478 U.S. 385, 395 (1986); *Groesch v. City of Springfield*, 635 F.3d 1020 (7th Cir. 2011). Every pay period from October 10, 2023 forward in which the Village withheld the wages and benefits it had previously paid Plaintiff is independently within two years of his October 10, 2025 filing. The district court's collapse of every injury into a single March 2023 accrual date cannot be reconciled with this authority.

IV. The district court erred by fixing the accrual date of Count V (First Amendment retaliatory prosecution) at the March 18, 2023 arrest rather than the April 23, 2025 indictment.

The district court dismissed Count V on the ground that "the § 1983 action began to accrue on March 18, 2023." (R. 23 at 4.) That holding is foreclosed by binding Seventh Circuit precedent.

A. The operative retaliatory act is the April 23, 2025 grand jury indictment, not the March 18, 2023, arrest.

Count V challenges the April 23, 2025, grand jury indictment, not the March 18, 2023 arrest. The two are distinct events. The March 18, 2023, arrest charged Plaintiff with eavesdropping and burglary. The April 23, 2025, indictment — returned more than two years later — added a theft charge that did not exist in 2023. (R. 11 ¶¶ 511-23, 616-19.) As Plaintiff detailed in his Response (R. 18), the indictment was returned on the testimony of a single Fox Lake Police Department employee. The theft charge was based on the Village's misrepresentations that Plaintiff had stolen approximately $20,000 from Village funds — misrepresentations Plaintiff had refuted with documentary evidence including PayPal records, personal credit-card statements, and contemporaneous written agreements documenting Plaintiff's personal-funds purchases for municipal use. (*Id.* ¶¶ 517-18, 617(a)-(c).) Plaintiff alleges that the indictment was procured at the Village's instigation, motivated by retaliation for Plaintiff's protected First Amendment activity, and unsupported by probable cause as to the new theft charge. (*Id.* ¶¶ 616-19.)

That the indictment occurred in April 2025 — not March 2023 — is a pleaded fact the district court was required to accept as true. The order's assertion that all relevant conduct "occurred in early 2023" is not consistent with the allegations of the Amended Complaint.

B. Under Towne v. Donnelly, a First Amendment retaliatory-prosecution claim accrues when the retaliatory charges are brought.

Binding Seventh Circuit precedent holds that retaliatory-prosecution claims accrue when the retaliatory charges are brought. *Towne v. Donnelly*, 44 F.4th 666, 670-71 (7th Cir. 2022). Under *Towne*, the statute of limitations clock begins to run immediately after the retaliatory act occurred, so long as the plaintiff knows or should know that his or her constitutional rights have been violated. *Id.* Applied to a First Amendment retaliatory-prosecution claim, the operative retaliatory act is the bringing of the retaliatory charges. *Id.*

That conclusion is reinforced by the Supreme Court's decision in *McDonough v. Smith*, 588 U.S. 109 (2019), which held that a § 1983 fabrication-of-evidence claim does not accrue until the criminal proceedings against the plaintiff have terminated in his favor. While *McDonough* addresses a different theory of liability (fabrication of evidence rather than retaliatory motive), it confirms the broader principle that the limitations clock for § 1983 claims arising out of criminal proceedings runs from the event that completes the cause of action — not from any earlier event.

Here, the operative retaliatory act — the April 23, 2025 indictment — occurred less than six months before Plaintiff filed suit. The two-year SOL governing § 1983 claims, *Owens v. Okure*, 488 U.S. 235, 250 (1989), runs until April 23, 2027. The claim is timely by approximately eighteen months.

C. The district court's reliance on Gekas and Hileman misapprehends both cases.

To the extent the district court relied implicitly on *Gekas v. Vasiliades*, 814 F.3d 890 (7th Cir. 2016), or *Hileman v. Maze*, 367 F.3d 694 (7th Cir. 2004), for the proposition that retaliatory-prosecution claims accrue at arrest, those cases do not support that proposition.

Gekas does not support accrual at arrest. *Gekas* was itself a First Amendment retaliation case brought under § 1983 — not, as the term might suggest, a common-law malicious-prosecution case. The plaintiff there sued in 2010 over retaliatory administrative charges brought against him in 2004, and this Court held the claim untimely precisely because he filed more than two years after those charges — the operative retaliatory acts were brought. *Gekas*, 814 F.3d at 894. *Gekas* also rejected the plaintiff's attempt to borrow the malicious-prosecution tort's favorable-termination accrual rule, explaining that First Amendment retaliation and malicious prosecution are "fundamentally different causes of action." *Id.* Properly read, *Gekas* confirms Plaintiff's position rather than undermining it: the limitations clock runs from each retaliatory charging act. The district court's error lay not in citing *Gekas* but in identifying the wrong act — fixing accrual at the March 18, 2023, arrest while ignoring the discrete, later charging decision the Amended Complaint actually challenges: the April 23, 2025 indictment.

Hileman cuts against the district court's approach rather than supporting it. There, the district court had dismissed a § 1983 claim as time-barred by fixing accrual at the earliest arguable act; this Court reversed, holding that accrual turns on the operative decision that completes the injury and that the inquiry is fact-intensive. *Hileman*, 367 F.3d 694. *Hileman* thus confirms that a § 1983 limitations dismissal cannot rest on a mechanical choice of the earliest event — precisely the error the district court committed in fixing Count V's accrual at the March 18, 2023 arrest rather than the April 23, 2025 indictment.

On a properly accepted factual record — the April 23, 2025 indictment is the operative retaliatory act — Count V was filed approximately six months after accrual. It is timely. The district court's contrary conclusion was reversible error.

D. The Village's litigating positions on Count V are irreconcilable, and either requires reversal.

The dismissal of Count V also cannot be squared with the Village's own shifting positions. In its first motion to dismiss, the Village argued that the retaliatory-prosecution count was premature and had to be dismissed because Plaintiff "has not alleged that his parallel criminal proceeding has terminated . . . in his favor." (R. 4 at 11-12.) In its operative motion, the Village argued the opposite — that the very same count accrued, and the limitations period expired, in 2023. (R. 12; R. 23 at 4.) Those positions cannot both be correct. A claim that cannot yet be filed because the criminal case has not terminated favorably cannot simultaneously be a claim that accrued and lapsed years earlier; and a claim that accrued in 2023 cannot also require a favorable termination that has not yet occurred.

Binding precedent resolves the contradiction in Plaintiff's favor on either branch. This Court has squarely held that a First Amendment retaliatory-prosecution claim does not require favorable termination of the criminal proceeding; the claim accrues, and may be pursued, when the retaliatory charges are brought. *Towne*, 44 F.4th at 670-72. The Village's first theory is therefore foreclosed as a matter of law. And its second theory fails because, as shown above, the operative retaliatory act is the April 23, 2025 indictment, not the 2023 arrest. The Village cannot escape reversal by retreating from one untenable position to the other: if it contends the claim is unripe for want of a favorable

termination, *Towne* forecloses the contention; if it contends the claim accrued in 2023, the April 2025 indictment defeats it. On either branch, the dismissal of Count V must be reversed.

Nor could the dismissal of Count V be affirmed on the alternative ground that Plaintiff's pleadings establish probable cause. The district court did not reach probable cause. (R. 23 at 5 n.3.) The Village's probable-cause argument below addressed only the eavesdropping charge; it did not address the April 2025 theft charge that Count V challenges. (R. 12 § IV.) Plaintiff affirmatively pleaded the absence of probable cause for the theft and burglary charges, alleging that the purportedly stolen items were purchased with his own funds or placed in municipal service under documented agreements, and that the indictment was procured through false testimony by a single Village employee. (R. 11 ¶¶ 616-19; R. 18 at 13-14.) Probable cause thus presents, at most, a fact question that cannot be resolved against Plaintiff on a Rule 12(b)(6) motion.

V. The district court reversibly erred by failing to address Plaintiff's properly preserved equitable-tolling argument.

Independent of accrual, Plaintiff's Response brief preserved an equitable-tolling argument that the district court did not address. Under *Holland v. Florida*, 560 U.S. 631, 649 (2010), equitable tolling is available where the plaintiff (1) diligently pursued his rights and (2) was prevented from timely filing by extraordinary circumstances. Where "serious instances of attorney misconduct" prevent a litigant who has diligently pursued his rights from filing on time, *id.* at 652, tolling is warranted. *Maples v. Thomas*, 565 U.S. 266, 281-83 (2012), recognizes attorney abandonment as a separate, independent extraordinary circumstance. The district court's order does not address either decision — or the equitable-tolling argument at all. That silence is reversible error.

A. The issue was properly preserved below.

Plaintiff's Response in Opposition (R. 18) raised equitable tolling in a dedicated section of his brief, *Holland v. Florida* by name, alleged attorney interference with Plaintiff's efforts to retain civil counsel and explained that the structural posture — the Village's refusal to communicate directly with Plaintiff while the criminal case remained pending — prevented timely filing notwithstanding diligence. (R. 18 at 11-12.) The argument was sufficiently developed to require a ruling. Because this Court reviews the Rule 12(b)(6) dismissal de novo, the preserved equitable-tolling question is squarely before this Court regardless of whether the district court reached it. *Adams*, 742 F.3d at 728.

B. Holland and Maples supply the governing framework.

Equitable tolling is available where a plaintiff (1) has pursued his rights diligently and (2) was prevented from timely filing by some extraordinary circumstance. *Holland v. Florida*, 560 U.S. 631, 649 (2010) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)). *Holland* rejected any per se rule that attorney conduct short of bad faith cannot satisfy the second prong, holding that "serious instances of attorney misconduct" can support tolling even absent fraud. *Id.* at 651-52. *Maples v. Thomas*, 565 U.S. 266, 281-83 (2012), goes further: attorney abandonment — conduct that severs the agency relationship in fact — is an extraordinary circumstance independent of *Holland*, because "a client cannot be charged with the acts or omissions of an attorney who has abandoned him." This framework is not confined to habeas; the diligence-and-extraordinary-circumstances standard applies even against governmental defendants. *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 96 (1990).

Plaintiff's theory fits both decisions. The interference here was not mere neglect: Plaintiff's criminal-defense counsel affirmatively represented to prospective civil counsel that resolution of the criminal case was imminent, so that civil counsel did not engage and Plaintiff's civil claims went unfiled. That is the "serious instance[] of attorney misconduct" *Holland* recognizes. And under *Maples*, Plaintiff need not show that counsel physically walked away from the criminal case; it is

enough that counsel functionally severed the agency relationship as to one set of interests — Plaintiff's civil claims — while continuing to act on the criminal defense.

C. Plaintiff diligently pursued his rights.

Diligence does not require perfection; it requires reasonable effort under the circumstances. Plaintiff's pleaded facts establish the requisite diligence:

Plaintiff began documenting and reporting alleged misconduct in November 2022, more than three months before any adverse action. (R. 11 ¶¶ 116-119.) He testified before the Village's independent investigator on March 15, 2023. (R. 11 ¶¶ 145-153.) He submitted a written whistleblower complaint to the Chief of Police on March 15-16, 2023, and disclosed the same misconduct to Investigator Rob Beach of the Lake County State's Attorney's Office on March 16, 2023. (R. 11 ¶¶ 163-170, 177-187.) He preserved documentation throughout. He attempted to retain civil counsel beginning at least as early as 2023 and continuing through 2025, but encountered obstacles created by his criminal-defense attorney's representations to prospective civil counsel that he had negotiated a resolution of the criminal case — representations that proved false but that effectively discouraged civil counsel from engaging. (R. 11 ¶¶ 597-604.) When Plaintiff eventually concluded that no resolution was forthcoming, he filed his complaint pro se on October 10, 2025. (R. 11 ¶ 598(h).)

That is diligence. *Holland*, 560 U.S. at 653 (the petitioner's repeated letters to counsel demonstrated the "diligence" required for tolling).

D. Extraordinary circumstances prevented timely filing.

The Amended Complaint pleads, and the Response brief developed, four interlocking circumstances that together meet the extraordinary-circumstance standard articulated in *Holland* and *Maples*.

First, active attorney interference with the retention of civil counsel. Plaintiff's criminal-defense counsel represented to prospective civil counsel that resolution of the criminal case was

imminent, that a negotiated resolution of the criminal case was being worked out, and that civil litigation should await that resolution. (R. 11 ¶¶ 597-604.) Those representations did not result in any resolution of the criminal case, which remains pending. The result was that civil counsel did not engage, and Plaintiff was effectively isolated from the civil-litigation track he had a right to pursue. This is the "serious instances of attorney misconduct" that *Holland* recognized as supporting tolling. 560 U.S. at 652.

Second, functional abandonment of Plaintiff's civil-rights claims. Counsel did not file civil claims, did not preserve civil claims, and did not refer Plaintiff to civil counsel who would have filed civil claims within the relevant limitations periods. Counsel's representations regarding criminal resolution were the mechanism by which civil claims were not preserved. This is the "abandonment" *Maples* recognized as independently extraordinary. 565 U.S. at 281-83.

Third, structural impossibility of self-representation during the pendency of the criminal case. Plaintiff was simultaneously a criminal defendant and a prospective civil plaintiff. The State's pending criminal charges meant that any direct attempt by Plaintiff to communicate with the Village or its counsel risked complications in the criminal case — a risk that any reasonable defendant would mitigate by routing communications through counsel. The Village itself recognized this posture and **refused to engage with Plaintiff directly regarding the allegations** throughout the relevant period, instead routing all substantive communications through Plaintiff's criminal-defense counsel — even when Plaintiff personally requested information about the allegations being made against him. Although the Village delivered two one-way notifications directly to Plaintiff during this period (an October 11, 2023 letter delivered by Chief DeServi advising of the Board's vote, and a November 6, 2023 letter from Assistant Village Administrator Chernich purporting to backdate the suspension), neither communication engaged with the substance of the allegations or responded to Plaintiff's requests for information. That refusal to engage was not incidental; it was structural. The Village's communications policy made it operationally impossible for Plaintiff, while represented in a parallel criminal proceeding, to substitute his own civil voice for the absent voice of counsel who

was failing to advance those civil claims. To the extent the Village now argues that Plaintiff could or should have inquired or filed sooner, that argument is in irreconcilable tension with the Village's own contemporaneous insistence on routing all communications through criminal-defense counsel.

Fourth, ongoing concealment of foundational documents. As detailed in Argument III.B, several categories of foundational documents bearing on the wrongful cause of the prosecution — the search warrant affidavit, the grand jury transcripts, the criminal-case discovery materials, and Plaintiff's own seized investigative notes, complaint packet, and original purchasing documentation (released by the State's Attorney's Office not to Plaintiff but to the Village's contracted investigator Byrne, R. 11 ¶¶ 243, 531) — remain undisclosed to Plaintiff today. To the extent the Village argues that Plaintiff should have brought certain claims earlier, that argument is in tension with the Village's simultaneous withholding of the documents on which the wrongful-cause element of those claims' rests. A plaintiff cannot be required to plead facts he has been prevented from discovering.

Together, these circumstances supply the "extraordinary circumstance" that, combined with the diligence detailed above, *Holland* recognized as supporting tolling. 560 U.S. at 649. The district court did not address them. Where a properly preserved equitable-tolling theory is unaddressed in the order under review, the omission alone supplies grounds for reversal.

VI. The dismissal of Count II (Illinois Identity Protection Act) is preserved for review.

The district court dismissed Count II for lack of an implied private right of action under 5 ILCS 179/1 et seq. (R. 23 at 4-5.) Plaintiff preserves the issue for review and notes that the Illinois Identity Protection Act's express requirement that local governmental entities adopt and follow Identity Protection Policies (5 ILCS 179/35-37), and the Village's own Identity Protection Policy provisions stating that protected personal information "MAY NOT" be publicly posted (R. 11, Ex. KK at 123-24), supply a basis for arguing implied enforcement consistent with *Fisher v. Lexington Health Care, Inc.*, 188 Ill. 2d 455, 460-61 (1999) (four-factor test for implied private rights of action

under Illinois statutes). Plaintiff does not press Count II as the principal basis for reversal. The issue is preserved for review without further elaboration.

VII. At a minimum, the district court abused its discretion in dismissing the Amended Complaint with prejudice and without leave to amend.

Plaintiff requested leave to amend in the alternative below. (R. 18 at 12-13, 15.) The district court dismissed with prejudice without addressing the request. (R. 23 at 5.) The order does not state that amendment would be futile. The order does not analyze the requirements of Federal Rule of Civil Procedure 15(a)(2). The order makes no finding of bad faith, dilatory motive, or repeated failure to cure deficiencies. *See Foman v. Davis*, 371 U.S. 178, 182 (1962) (listing the factors a district court must consider before denying leave to amend).

This Court has repeatedly emphasized the propriety of leave to amend for pro se plaintiffs facing limitations-based dismissals. *Runnion ex rel. Runnion v. Girl Scouts of Greater Chicago & Northwest Indiana*, 786 F.3d 510, 519-20 (7th Cir. 2015), instructs that "the better practice is to allow at least one amendment regardless of how unpromising the initial pleading appears because except in unusual circumstances it is unlikely that the court will be able to determine conclusively on the face of a defective pleading whether the plaintiff actually can state a claim." *Id.* (citation omitted). Where, as here, the dismissal turned on questions of accrual, equitable tolling, and the application of a contested limitations period to a statutory cause of action — questions on which discovery, supplemental allegations, or further legal development could alter the analysis — dismissal with prejudice was an abuse of discretion.

Such relief is consistent with the long-standing rule that a pro se complaint "is to be liberally construed," *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam), and "held to less stringent standards than formal pleadings drafted by lawyers," *Haines v. Kerner*, 404 U.S. 519, 520 (1972)

(per curiam). At a minimum, this Court should remand with instructions to permit Plaintiff to file a Second Amended Complaint addressing any pleading deficiencies the Court identifies.

CONCLUSION

Even if this Court were to disagree with Plaintiff as to one or more of the foregoing arguments, the judgment should be reversed at least in part. The district court dismissed every count with prejudice on the basis of a single March 2023 accrual premise, without addressing the October 10, 2023 Board vote as a discrete act, without analyzing equitable tolling, without considering whether amendment would be futile, and without applying the claim-specific accrual and limitations rules governing the Illinois Whistleblower Act, the Public Officer Prohibited Activities Act, and First Amendment retaliatory prosecution. Each of those errors independently supports reversal as to the count it affects. This Court need not adopt every argument advanced here to conclude that the district court's wholesale dismissal with prejudice cannot stand.

For the foregoing reasons, Plaintiff-Appellant Ryan Kelly respectfully requests that this Court:

1. Reverse the district court's April 7, 2026, order dismissing Counts I, III, IV, and V on statute-of-limitations grounds;

2. Reverse the district court's dismissal with prejudice;

3. Remand the action to the district court with instructions to permit Plaintiff to file a Second Amended Complaint and to address Plaintiff's equitable-tolling argument under *Holland v. Florida*; and

4. Grant such further relief as is just and proper.

Respectfully submitted,

Dated: May 26, 2026

[redacted]

/s/ Ryan Kelly

[redacted]

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g) and Circuit Rule 32, the undersigned certifies that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) and Circuit Rule 32(c) because, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), this brief contains 13,708 words.

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and Circuit Rule 32(b), and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6), because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 12-point Times New Roman, as permitted by Circuit Rule 32(b).

Dated: May 26, 2026

[redacted]

/s/ Ryan Kelly

Ryan Kelly, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Brief of Plaintiff-Appellant and Short Appendix to be served on counsel for Defendant-Appellee by depositing it in the United States Mail, Certified Mail, postage prepaid, on May 26, 2026, addressed as follows:

[redacted]

Dated: May 26, 2026

[redacted]

/s/ Ryan Kelly

[redacted]

SHORT APPENDIX

APPENDIX CONTENTS

SA-1……District Court Order Dismissing Case With Prejudice, R.23

SA-6…... Final Judgment, R.31

CIRCUIT RULE 30(D) APPENDIX CERTIFICATION

Pursuant to Circuit Rule 30(d), the undersigned, an unrepresented litigant, certifies that all materials required by Circuit Rule 30(a) are included in the appendix.

Dated: May 26, 2026

[redacted]

/s/ Ryan Kelly

[redacted]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RYAN KELLY,
Plaintiff

v.

VILLAGE OF FOX LAKE, *et al.*,
Defendants

No. 25 CV 15047

Judge Jeremy C. Daniel

ORDER

The defendant's motion to dismiss [11] is granted. All claims are dismissed with prejudice. Civil case terminated.

STATEMENT

Background and Legal Standard

This case is before the Court on Defendant Village of Fox Lake's (the "Village") motion to dismiss Plaintiff Ryan Kelly's complaint. (*See generally* R. 12.) The following description of events underlying these claims is drawn from the complaint and presumed true for the purpose of resolving this motion. *Virnich v. Vorwald*, 664 F.3d 206, 212 (7th Cir. 2011). The plaintiff was employed by the defendant as Director of the Northwest Region Water Reclamation Facility. (R. 11 ¶ 16.)[1] In 2013, the plaintiff identified and documented what he alleged to be the improper diversion of Northwest Region funds into the Village's general fund. (*Id.* ¶ 41.) He continued to identify such diversions and report them to Village officials throughout the following decade. (*Id.* ¶¶ 42, 61). From November 2022 to February 2023, the plaintiff had various communications with Village officials regarding alleged official misconduct by Village administrator Deborah Waszak and Police Chief Jimmy Lee. (*Id.* ¶ 117.)

The Mayor of Fox Lake notified the plaintiff in January 2023 that he would be hiring the law firm Clark Baird Smith to initiate an independent investigation into the reports of misconduct and announced it publicly the following month. (*Id.* ¶¶ 120, 136.) The plaintiff made an official complaint to Chief Lee and the Lake County State's Attorney Office on March 15, 2023. (*Id.* ¶¶ 175–77.) He alleges that, one day later, he was placed on administrative leave, and that the Deputy Police Chief

[1] For ECF filings, the Court cites to the page number(s) in the document's ECF header unless citing to a particular paragraph or other page designation is more appropriate.

conducted a warrantless search of his office. (*Id.* ¶¶ 190, 195.) The police justified their search by citing the plaintiff's use of a voice-recording pen during meetings. (*Id.* ¶ 236.) On March 18, 2023, the plaintiff was arrested, for which he claims there was no basis or probable cause. (*Id.* ¶¶ 272–84.) Later, he learned that it was based on his use of the recording pen to eavesdrop on police meetings. (*Id.* ¶ 349.) The plaintiff then alleges that in September 2023, in response to a FOIA request, the Village released his personnel records, which included unredacted personal identifying information such as his social security number, date of birth, and home address. (*Id.* ¶¶ 473–78.)

In April 2025, a Lake County grand jury indicted the plaintiff on charges of eavesdropping, burglary, and theft. (*Id.* ¶ 517.) The plaintiff alleges that these charges were brought for a retaliatory purpose. (*Id.* ¶ 619.) The plaintiff filed a state court lawsuit against the Village of Fox Lake in October 2025, which was removed to federal court in December 2025. (*See generally* R. 1; R. 1-1.) Kelly then amended his complaint in January 2026. (R. 11.) He claims the Village violated Amendments I, IV, V, and XIV of the United States Constitution, the Illinois Whistleblower Act, the Illinois Identity Protection Act, and the Illinois Public Officers Prohibited Activities Act. (*See generally id.*)

A Rule 12(b)(6) motion tests whether the plaintiff has provided "enough factual information to state a claim to relief that is plausible on its face and has raised a right to relief above the speculative level." *Haywood v. Massage Envy Franchising, LLC*, 887 F.3d 329, 333 (7th Cir. 2018) (citing *Camasta v. Jos. A. Bank Clothiers, Inc.*, 761 F.3d 732, 736 (7th Cir. 2014)). In deciding a Rule 12(b)(6) motion, the Court accepts as true all well-pleaded factual allegations and draws all reasonable inferences in favor of the non-moving party. *Lax v. Mayorkas*, 20 F.4th 1178, 1181 (7th Cir. 2021). Dismissal is proper where "the allegations . . . , however true, could not raise a claim of entitlement to relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007).

Analysis

Rule 8 Compliance

The defendant first argues that the complaint violates Rule 8 of the Federal Rules of Civil Procedure. A complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *see also Srivastava v. Daniels*, 409 F. App'x 953, 955 (7th Cir. 2011). The short and plain statement under Rule 8(a)(2) must "give the defendant fair notice of what the claim is and the grounds upon which it rests." *Twombly*, 550 U.S. at 555. Under Federal Rule of Civil Procedure 10(c), "[a] copy of a written instrument that is an exhibit to a pleading is part of the pleading for all purposes."

Reading the complaint in its entirety, the Court finds that the plaintiff has failed to comply with Rule 8. The amended complaint is not short. It has 620 paragraphs and is often repetitive. (*See, e.g.*, *id.* ¶¶ 587, 591.) Many of these paragraphs contain subparagraphs, and the subsections under "Factual Allegations" stretch from part "A" to part "RR." (*Id.* at 71.) It is also not plain. It attaches thirty-eight exhibits numbering 302 pages, or three times the number of pages in the complaint itself. Attaching a high quantity of lengthy exhibits to a complaint does not constitute a "short and plain statement of the claim." Fed. R. Civ. P. 8(a)(2); *see also United States ex rel. Garst v. Lockheed-Martin Corp.*, 328 F.3d 374, 378 (7th Cir. 2003); *Pearson v. Gesner*, 125 F.4th 400, 406–07 (2d Cir. 2025).[2]

While the Court chooses not to dismiss the complaint solely based on its non-compliance with Rule 8, it reminds the plaintiff that, even if he proceeds *pro se*, he is not entitled to inundate the defendants or the Court with hundreds of pages of material to wade through when filing a complaint.

Statutes of Limitations

The defendant next argues that the plaintiff's claims are barred by the statutes of limitations under the Illinois Tort Immunity Act and Section 1983 of the Civil Rights Act of 1964. *See* 745 ILCS 10/8-101; 42 U.S.C. § 1983.

The Illinois Tort Immunity Act establishes a one-year statute of limitations for any actions brought "against a local entity or any of its employees for any injury unless it is commenced within one year from the date that the injury was received or the cause of action accrued." 745 ILCS 10/8-101. The defendant argues that Counts I, II, and III are barred by this statute of limitations. The Court assesses dismissal of Count II on separate grounds below.

Counts I and III allege that the defendant retaliated against the plaintiff in violation of the Illinois Whistleblower Act and the Public Officers Prohibited Activities Act by, among other things, placing him on administrative leave and suspending him without pay. 740 ILCS 174/15(a); 5 ILCS 105/4.1. "[T]he Supreme Court of Illinois treats retaliatory discharge as a tort." *Spearman v. Exxon Coal USA, Inc.*, 16 F.3d 722, 723

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[2] Other district courts have, persuasively, held the same. *See Craig v. Conn. Dep't of Mental Health & Addiction Servs.*, No. 3:16-CV-2100 (JCH), 2017 WL 5892193, at *7 n.7 (D. Conn. Nov. 28, 2017) ("While exhibits may supplement facts plead in a complaint, the plaintiff cannot refer the court to exhibits as a substitute for following Rule 8's requirement to state claims with sufficient clarity that the defense, and the court, have notice of what is being plead and can assess the merits of the complaint."); *see also Eaves v. Castro*, No. 1:09-cv01647-SKO PC, 2010 WL 2817069, at *3 (E.D. Cal. Jul. 16, 2010) ("Attaching a large number of exhibits to a complaint will result in the complaint being dismissed for failure to comply with Federal Rule of Civil Procedure 8, as it will render the complaint to be neither a 'short' nor 'plain' statement of Plaintiff's claims.").

(7th Cir. 1994) (citing *Kelsay v. Motorola, Inc.*, 384 N.E.2d 353 (Ill. 1978)); *see also Boyles v. Greater Peoria Mass Trans. Dist.*, 499 N.E.2d 435, 439 (Ill. 1986). Thus, the one-year statute of limitations applies. The plaintiff alleges that the retaliatory discharge occurred in 2023, (R. 11 ¶ 190), which is over one year prior to the filing of this suit in October 2025. (*See* R. 1.) These claims are accordingly dismissed with prejudice. *Elmore v. Henderson*, 227 F.3d 1009, 1011 (7th Cir. 2000) ("[I]f the statute of limitations has run the dismissal is effectively with prejudice.").

Count IV alleges that the defendant violated the First, Fourth, Fifth, and Fourteenth Amendments of the United States Constitution. U.S. Const. amend. I, IV, V, XIV. In Illinois, the statute of limitations for a § 1983 claim is two years. *Liberty v. City of Chicago*, 860 F.3d 1017, 1019 (7th Cir. 2017) ("The appropriate statute of limitations for § 1983 cases filed in Illinois is two years, as set forth in Illinois' personal injury statute, 735 Ill. Comp. Stat. 5/13-202."). All of the conduct underlying these claims occurred in early 2023, which is more than two years prior to the filing of the suit; the plaintiff was suspended and his office was searched in March 2023. (*See* R. 11 ¶¶ 605–11.) Therefore, Count IV is dismissed with prejudice. *See Elmore*, 227 F.3d at 1011.

Count V alleges that the defendant retaliated against the plaintiff in violation of the First Amendment of the United States Constitution through a retaliatory indictment. U.S. Const. amend. I. "Generally, the statute of limitations clock begins to run on First Amendment retaliation claims immediately after the retaliatory act occurred." *Gekas v. Vasiliades*, 814 F.3d 890, 894 (7th Cir. 2016). The accrual date is when the plaintiff "knows or should know that his or her constitutional rights have been violated." *Hileman v. Maze*, 367 F.3d 694, 696 (7th Cir. 2004). The plaintiff alleges that he was arrested on March 18, 2023. (R. 11 ¶¶ 272, 279.) The arrest is sufficient to show that the plaintiff was on notice of the alleged violation of his constitutional rights. Thus, the § 1983 action began to accrue on March 18, 2023, which is more than two years prior to the filing of this lawsuit in October 2025. Count V is dismissed with prejudice. *See Elmore*, 227 F.3d at 1011.

Private Rights of Action

Count II alleges that the defendant violated the Illinois Identity Protection Act. 5 ILCS 179/10. The defendant argues that this statute does not create a private right of action under which the plaintiff can recover damages. This is correct. The enforcement mechanism outlined in the statute is simply a Class B misdemeanor. 5 ILCS 179/45. No provision of the statute expressly permits any aggrieved party to pursue damages. Though "[a] court may determine that a private right of action is implied in a statute," this is rare. *Fisher v. Lexington Health Care Inc.*, 722 N.E.2d 1115, 1117 (Ill. 1999); *see also Chrysler Corp. v. Brown*, 441 U.S. 281, 316 (1979).

> Implication of a private right of action is appropriate if: (1) the plaintiff is a member of the class for whose benefit the statute was enacted; (2) the plaintiff's injury is one the statute was designed to prevent; (3) a private right of action is consistent with the underlying purpose of the statute; and (4) implying a private right of action is necessary to provide an adequate remedy for violations of the statute.

Id. at 1117–18. The Court finds that the express inclusion of an existing remedy under criminal law means that the implication of a private right of action under the statute is not warranted. *See Brown*, 441 U.S. at 316 (citing *Cort v. Ash*, 422 U.S. 66, 95 (1975) ("[T]his Court has rarely implied a private right of action under a criminal statute, and where it has done so 'there was at least a statutory basis for inferring that a civil cause of action of some sort lay in favor of someone.'"). Accordingly, because amendment would be futile, Count II is dismissed with prejudice. *Sereda v. Nomad Freight, Inc.*, No. 25-1584, 2026 WL 511138 (7th Cir. Feb. 24, 2026).[3]

Date: April 7, 2026

[redacted]
JEREMY C. DANIEL
United States District Judge

[3] Because the Court dismisses all claims on other grounds, it need not reach either the issues of liability under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978), or the sufficiency of the complaint's allegations.

ILND 450 (Rev. 10/13) Judgment in a Civil Action

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

RYAN KELLY,

Plaintiff(s),

v.

VILLAGE OF FOX LAKE, et al.,

Defendant(s).

Case No. 25 cv 15047
Judge Jeremy C. Daniel

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $,

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☐ in favor of defendant(s)
and against plaintiff(s)

Defendant(s) shall recover costs from plaintiff(s).

☒ other: Judgment entered in favor defendant and against plaintiff.

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☒ decided by Judge Jeremy C. Daniel on a motion to dismiss.

Date: 4/10/2026

Thomas G. Bruton, Clerk of Court

Vettina Franklin, Deputy Clerk